

FEDERAL MARITIME COMMISSION

DOCKET NO. 14-04

EDAF ANTILLAS, INC.

v.

**CROWLEY CARIBBEAN LOGISTICS, LLC;
IFS INTERNATIONAL FORWARDING, S.L.; and
IFS NEUTRAL MARITIME SERVICES**

**RESPONDENT CROWLEY CARIBBEAN LOGISTICS, LLC'S MOTION FOR
RECONSIDERATION OF ORDER ON MOTIONS TO DISMISS**

Respondent Crowley Caribbean Logistics ("CCL") hereby moves for reconsideration of the November 6, 2014 Order on Motions to Dismiss ("Order"), insofar as it denies CCL's Motion to Dismiss with respect to Edaf Antillas, Inc.'s ("Edaf") Section 10(d)(1) claims pertaining to transportation between Puerto Rico and St. Maarten.¹ As detailed in the memorandum below, Exhibit 14 to the Complaint, on which the Order relies in denying dismissal, is not an assumption of carrier responsibility, as the Order states, but merely a form of notice commonly used within the industry. Because of this material mistake of fact, and because the claim regarding Exhibit 14 was first raised in the Order, and not asserted by Edaf, it must be reconsidered.

I. AUTHORITY TO GRANT RECONSIDERATION

A Presiding Judge "may properly reconsider and reverse interlocutory rulings made prior to the initial decision." *Odyssea Stevedoring of Puerto Rico, Inc. v. Puerto Rico Ports Authority*, 30 SRR 1324, 1328 (ALJ 2007). *See, e.g., Carolina Marine Handling v. South Carolina State*

¹ This includes the claim that CCL acted unreasonably in connection with that transportation by providing incorrect information to Edaf's Customs Broker.

Ports Authority, 28 SRR 1603, 1603 (ALJ 2000); *Bookman v. United States*, 453 F.2d 1263, 1265 (Ct. Cl. 1972). In deciding whether to grant reconsideration, a Presiding Judge is not limited to the grounds specified in Rule 261 for reconsideration of a final decision of the Commission, but rather may act based on any relevant factual misconception. *Odyssea, South Carolina, supra*.

II. ARGUMENT

The Order expressly states that the decision not to dismiss Edaf's Section 10(d)(1) claims concerning CCL's role in transporting the cargo between Puerto Rico and St. Maarten was based solely on the factual conclusion that "CCL issued a bill of lading assuming responsibility for transporting Editorial Edaf's shipment . . . for its return from St. Martin to San Juan" Order at 20 (citing Complaint Exh. 14). This conclusion was reached even though Edaf never argued that Exhibit 14 constitutes an assumption of responsibility by CCL (and correspondingly Edaf). Because Edaf never made such an argument, its adoption in the Order is outside the proper scope of the Presiding Judge's authority, and deprived CCL of an adequate opportunity to address the issue prior to decision. More importantly, the conclusion is demonstrably incorrect as a matter of fact.

1. The Presiding Judge may not rely on a Ground not Asserted by Edaf.

The Complaint in this case does not allege that CCL acted as a common carrier in connection with the movements between Puerto Rico and St. Maarten. Rather, it states only that "CCL acts as the agents for Respondents IFS and Neutral" Complaint ¶ U. Nor does Complainant's response to CCL's motion to dismiss assert either (i) that CCL acted as a common carrier for those movements, or (ii) that Exhibit 14 represents a contract of affreightment that imposed obligations upon CCL and Edaf. Instead, it claims only that CCL "might" have played a role in the "exportation of the noncompliant container from Puerto Rico"

to St. Maarten.² Because Edaf never made either such argument, neither the Presiding Judge nor the Commission itself is authorized to render a decision on that basis. *See All Marine Moorings, Inc. v. ITO Corp. Of Baltimore*, 27 SRR 539, 547 & nn. 13, 14 (FMC 1996) (declining to consider a line of argument that the complainant did not raise).

2. The Order is Based on a Misconception of Fact.

Even if the Presiding Judge were authorized to rule sua sponte based on an argument never made by Edaf, the conclusion reached in the Order is incorrect as a matter of fact.

Because Edaf did not argue in its response to CCL's motion to dismiss either that CCL was a common carrier to or from St. Maarten or that Exhibit 14 constitutes a contract of carriage, CCL did not in its reply address those issues in any detail. CCL did, however, provide a brief explanation, not referenced in the Order, regarding the import of Exhibit 14:

“Exhibit 14 to the Complaint is a non-negotiable bill of lading reflecting the transportation between Puerto Rico and St. Maarten. ***This is not a bill of lading for transportation, but rather a simple notification to Complainant of cargo receipt and tax released status.*** . . . And as Exhibit 13 to the Complaint (CCL's invoice) shows, CCL billed Complainant only for the three destination services provided by CCL – totaling \$116 (BL release fee, scanning charge, and CBPA inspection) . . .” CCL Reply Memorandum p. 7, n.6 (emphasis added).³

While the foregoing itself is sufficient to mandate reconsideration, the attached Declaration of Michelle Pacheco Rivera, Manager for Freight Services at CCL, confirms that there was no carrier/shipper relationship between CCL and Edaf. Ms. Rivera, who is familiar both with the transaction at issue and with bills of lading in general, explains as follows:

² We note that Complainant's response did not mention at all the return trip from St. Maarten *to* Puerto Rico, upon which the Order relies, but only the export *from* Puerto Rico.

³ Indeed IFS has in discovery acknowledged that it, not Edaf, paid the freight. *See* Exhibit A. If CCL and Edaf had been in a carrier/shipper relationship, Edaf, rather than IFS, would have been required to pay the freight and would have had to seek recompense from IFS.

- “Exhibit 14 is not an operative bill of lading that imposes any responsibility” on either CCL or Edaf. Declaration Paras. 4,5.
- Among other reasons, Exhibit 14 differs “from a bill of lading,” because it is missing “essential” terms and information of a bill of lading, “such as freight terms, charges, rates or the prepaid charges.” Declaration Para. 7.
- Based on Ms. Rivera’s personal knowledge of the shipment, the sole purpose of Exhibit 14 was “simply as a courtesy notice” to Edaf that its shipment had been received and was tax released. This is the document that CCL typically sends as such a form of notice. Declaration Para. 6.
- Edaf was not responsible for, and did not pay, the freight. Rather, it was advanced to CMA by CCL as agent for IFS (the entity having the carrier responsibility to Edaf), which repaid CCL. Declaration Para. 9.

Accordingly, Ms. Rivera attests that “Exhibit 14 is not a bill of lading and does not create a common carrier relationship between Edaf and CCL.” Declaration Para. 8.

III. CONCLUSION

For the foregoing reasons, CCL respectfully requests that the Presiding Judge reconsider the Order and grant CCL’s Motion to Dismiss in its entirety, including Edaf’s Section 10(d)(1) claims pertaining to transportation between Puerto Rico and St. Maarten.

Dated: November 21, 2014

Respectfully submitted,

BY: 
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Exhibit A

**EXCERPTS OF RESPONDENTS IFS INTERNATIONAL FORWARDING, S.L.'s
AND IFS NEUTRAL MARITIME SERVICE, INC.'s RESPONSES TO COMPLAINANT
EDAF ANTILLAS, INC.'s FIRST SET OF INTERROGATORIES**

INTERROGATORY No. 28: Please describe IFS's involvement in formulating and executing a solution that allowed container number DVRU0610860 to successfully enter into the commerce of the United States.

RESPONSE: IFS was informed of the issue with container number DVRU0610860 and remained in continuous contact with CCL to resolve the issue. IFS agreed to cover all costs incurred, and the issue was resolved, resulting in the successful importation of complainant's cargo. See also the documents appended to these responses as Exhibits 13 – 16 & 18.

INTERROGATORY No. 29: Please indicate how the additional charges incurred in moving container number DVRU0610860 from Puerto Rico to Sint Maarten and back to Puerto Rico were satisfied.

RESPONSE: Charges were initially paid by CCL. CCL then added these charges to an invoice which was then sent to IFS and paid by IFS. See also the invoice contained in Exhibit 3 appended to these responses.

Exhibit B

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DECLARATION OF MICHELLE PACHECO RIVERA

I, Michelle Pacheco Rivera, state as follows to the best of my knowledge, information and belief:

1. I am the Manager for Freight Services at Crowley Caribbean Logistics ("CCL").
2. As part of my responsibilities at CCL, I am familiar with the shipment at issue in the above-referenced matter, as well as CCL bills of lading and bills of lading generally.
3. It is my understanding that the Presiding Judge in this matter has denied CCL's motion to dismiss in part based on Exhibit 14 to the Complaint ("Exhibit 14").
4. Based on my review of Exhibit 14, Exhibit 14 is not an operative bill of lading that imposes any responsibility on CCL.
5. Based on my review of Exhibit 14, Exhibit 14 does not require Edaf Antillas, Inc. ("Edaf") to pay CCL or to have any obligations to CCL.
6. From my knowledge of the transaction, Exhibit 14 was sent by CCL to Edaf Antillas, Inc. simply as a courtesy notice that Edaf Antillas, Inc.'s shipment had been received and that its shipment was tax released. Exhibit 14 is the type of document CCL typically sends as a form of notice.
7. Based on my review of Exhibit 14, Exhibit 14 is different from a bill of lading because it does not contain essential bill of lading information, such as freight terms, charges, rates or the prepaid charges.

8. Based on the above, Exhibit 14 is not a bill of lading and does not create a common carrier relationship between Edaf and CCL.
9. Based on my knowledge of the transaction at issue, although the freight due to CMA was advanced by CCL, IFS was ultimately responsible and therefore paid CCL for the advancement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 21st day of November, 2014.


A handwritten signature in black ink, appearing to read 'Michelle Pacheco Rivera', written over a horizontal line.

Michelle Pacheco Rivera
Manager, Freight Services
Crowley Caribbean Logistics, LLC

Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record by e-mailing a copy to each person.⁴

Dated at Washington, DC, this 21st day of November 2014.

A handwritten signature in black ink, appearing to read "Lindsey M. Nelson", is written over a horizontal line.

Lindsey M. Nelson

Counsel for Crowley Caribbean Logistics, LLC

⁴ The Parties agreed in the August 11, 2014 Joint Status Report that service among them would be effectuated by email, to reduce both delays and costs.